Supreme Court, U.S.
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No. 92-996

In the Supreme Court of the United States

OCTOBER TERM, 1992

BURTON D. LINNE, ET AL., PETITIONERS

v.

JAMES T. RIDEOUTTE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether federal attorneys and an Internal Revenue Service agent are absolutely immune from petitioners' claims that the attorneys wrongfully prosecuted petitioners and that the agent falsely testified at the criminal trial.

2. Whether petitioners' remaining allegations state a cognizable *Bivens* claim.

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OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1a-2a, is unpublished, but the decision is noted at 971 F.2d 766 (Table). The opinion of the district court, Pet. App. 3a-15a, is unreported.

JURISDICTION

The judgment of the court of appeals was entered on June 9, 1992. A petition for rehearing was denied on September 16, 1992. Pet. App. 18a. The petition for a writ of certiorari was filed on December 11, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners Burton D. Linne, Jack O. Slater, and John C. Imlay, IV, were convicted in the United States District Court for the Eastern District of Virginia on various counts of mail fraud, conspiracy to defraud the United States, and (in the case of Linne and Slater) willful failure to file income tax returns. *United States* v. *Linne*, Cr. No. 85-00223-A (E.D. Va. Dec. 20, 1985), aff'd, 826 F.2d 1061 (4th Cir. 1987) (Table), cert. denied, 484 U.S. 1019 (1988). The criminal convictions arose out of petitioners' marketing and promotion of a fraudulent scheme involving financial and accounting practices that, according to petitioners, allowed participating individuals to avoid any obligation to pay federal income tax. Pet. App. 3a-4a.

Petitioners appealed their convictions, arguing that the government had improperly failed to disclose an allegedly exculpatory investigative report—the "Rideoutte report"—prepared by IRS Agent James T. Rideoutte, who testified at petitioners' criminal trial. The court of appeals rejected that argument, holding that: (1) the Rideoutte report was not material to petitioners' intent to defraud or to their willfulness in failing to file federal tax returns; (2) the government had presented at trial "overwhelming evidence, independent of the IRS agent's testimony, from which the jury could find that [petitioners] knew of the unlawfulness of their activities;" and (3) the agent's testimony, which petitioners maintained could have been impeached through the Rideoutte report, was largely collateral to the charges against petitioners. See *United States* v. *Linne*, No. 86-5018(L) (4th Cir.

Aug. 14, 1987), slip op. 7-8 (unpublished) (reproduced in C.A. Mot. for Sum. Affirmance DX B).

2. On April 12, 1989, petitioners filed the instant *Bivens* action against the IRS agent and four federal attorneys involved in the criminal prosecution. *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Petitioners' 65-page complaint alleged that the five respondents had withheld evidence and committed perjury during petitioners' criminal trial. Petitioners alleged that respondents' actions violated the First, Fifth, Sixth, Seventh, and Ninth Amendments, as well as provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, and they demanded compensatory and punitive damages. They also sought a declaratory judgment that certain statements, testimony, and other representations were false and fraudulent and an injunction restraining the respondents from making related statements in connection with any prospective criminal, civil, or administrative proceedings. Pet. App. 3a; Compl. ¶¶ 1, 39, 72.

The district court granted summary judgment for respondents. Pet. App. 3a-15a. The court noted that the federal prosecutors were absolutely immune from damage claims based on the prosecutors' actions in initiating a criminal prosecution and presenting the government's case, see *Burns* v. *Reed*, 111 S. Ct. 1934 (1991); *Imbler* v. *Pachtman*, 424 U.S. 409 (1976); and the IRS agent was absolutely immune from damage claims based on his testimony at the criminal trial, see *Briscoe* v. *LaHue*, 460 U.S. 325 (1983). See Pet. App. 12a-14a. More fundamentally, the court concluded that petitioners "have failed to allege a

violation of a constitutional right," *id.* at 9a, or a violation of the RICO statute, *id.* at 12a. The court specifically rejected petitioners' argument that the government's criminal prosecution violated the First Amendment. *Id.* at 10a. The court explained that petitioners' convictions "stand as proof" that their advocacy of a fraudulent scheme is not constitutionally protected conduct and that petitioners are not entitled to use a *Bivens* suit, in lieu of the mechanisms available for review of their convictions, to challenge the government's actions at trial. *Ibid.* See also *id.* at 5a, 14a-15a.

3. The court of appeals summarily affirmed the district court's decision, stating that "[t]he merits of the parties' positions are so clear as to justify summary action." Pet. App. 2a. The court agreed that respondents are entitled to absolute immunity with respect to their actions at trial, notwithstanding petitioners' allegations of a conspiracy and violations of the RICO statute. *Id.* at 1a-2a. The court additionally noted that "[t]he proper vehicles for [petitioners'] challenge to the truthfulness of the government's evidence supporting their convictions are direct appeal and collateral review of those convictions." *Id.* at 2a.

ARGUMENT

1. It is well settled that federal attorneys are absolutely immune from a damages suit based on their actions "in initiating a prosecution and in presenting the State's case," *Imbler* v. *Pachtman*, 424 U.S. 409, 431 (1976), and that federal agents are absolutely immune from a damages suit based on their testimony in a criminal proceeding, *Briscoe* v. *LaHue*, 460 U.S.

325 (1983). Petitioners' submission in this Court appears to acknowledge that respondents are immune from claims premised on the respondents' in-court actions, see Pet. 13-14, and there accordingly is no warrant for review of the court of appeals' decision on that question.

2. Petitioners nevertheless contend that the prosecutors and the IRS agent in this case are subject to suit for participation in an alleged government attempt "to obstruct justice" and to "cover-up" that obstruction. Pet. 13-14; see also Pet. 14-20. That contention is without merit because, even apart from questions of immunity, petitioners' complaint fails to state a cognizable *Bivens* claim.

Petitioners' allegations that the government employees "obstruct[ed] justice" and engaged in a "*post*-criminal-trial cover-up" are premised on petitioners' continuing assertions that the government has suppressed evidence demonstrating petitioners' innocence. See Pet. 13. Specifically, petitioners allege that the Rideoutte report contained exculpatory evidence and that the government was obligated to produce it at trial. See Pet. 14-15 & nn.41-42 (citing Compl. ¶¶ 49-52, 57-60, 69, 70); Pet. 16-17 & nn.43-45 (citing Compl. ¶¶ 53-56). That matter, however, was fully litigated and definitively resolved in the prior criminal proceedings.

The Fourth Circuit held that the Rideoutte report was not material exculpatory evidence, see pp. 2-3, *supra*, and it follows that the government employees' failure to produce that report cannot support petitioners' claim in this *Bivens* action that the employees acted wrongfully. As the court of appeals explained:

> The proper vehicles for [petitioners'] challenge to the truthfulness of the government's evidence supporting their convictions are direct appeal and collateral review of those convictions.

Pet. App. 2a. In this instance, the court of appeals specifically concluded on direct appeal that the Rideoutte report was not material and had no significant impeachment value. *United States* v. *Linne*, No. 86-5018(L) (4th Cir. Aug. 14, 1987), slip op. 7-8 (unpublished). That court's determination is dispositive on the question whether the federal employees acted wrongfully, and it precludes petitioners from relitigating the question in this *Bivens* action—irrespective of the report's "'truthfulness' *vel non*" (Pet. 18). See, *e.g.*, *Allen* v. *McCurry*, 449 U.S. 90 (1980) (Section 1983 plaintiff is collaterally estopped from relitigating issues decided after a full and fair hearing in a state court criminal proceeding).

Petitioner argues (Pet. 14, 19-20) that even if his damage claims cannot go forward, he is entitled to declaratory or injunctive relief. But the preclusive effect of the Fourth Circuit's decision is not limited to a damages remedy. That court's finding that the Rideoutte report was not material exculpatory evidence bars any claim for relief premised on the government's failure to disclose the report at trial. Petitioners' contentions (Pet. 21-23) that the government employees "conspired" to suppress the Rideoutte report and that the alleged "cover-up" violated the RICO statute add nothing substantial to petitioners' case.

The court of appeals concluded that the defects in petitioners' position were "so clear as to justify

summary action." Pet. App. 2a. That court was under no obligation to discuss further petitioners' rambling and diffuse 65-page complaint, which is anything but a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). The district court specifically examined petitioners' contention that the government's criminal prosecution violated their rights under the First Amendment and correctly found that contention to be without merit. Pet. App. 8a-10a.*

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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* Because petitioners have failed to state a cognizable *Bivens* claim, no need exists for this Court to hold the petition pending its decisions in *Buckley* v. *Fitzsimmons*, No. 91-7849 (argued Feb. 22, 1993), and *Albright* v. *Oliver*, cert. granted, No. 92-833 (Mar. 1, 1993).